

**ECUADOR, NIGERIA, WEST PAPUA:
INDIGENOUS COMMUNITIES, ENVIRONMENTAL DEGRADATION, AND
INTERNATIONAL HUMAN RIGHTS STANDARDS**

**HEARING
BEFORE THE
TOM LANTOS HUMAN RIGHTS COMMISSION
HOUSE OF REPRESENTATIVES**

ONE HUNDRED AND ELEVENTH CONGRESS

FIRST SESSION

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TUESDAY, APRIL 28, 2009

HOUSE OF REPRESENTATIVES,
TOM LANTOS HUMAN RIGHTS COMMISSION,
Washington, D.C.

The commission met, pursuant to call, at 10:30 a.m. in Room 2200, Rayburn House Office Building, James P. McGovern [co-chairman of the commission] presiding.

Mr. McGOVERN. The hearing will come to order. Good morning. I would like to thank everyone for coming this morning to this very important hearing that seeks to explore the links between international human rights and humanitarian law, the rights of indigenous peoples and the impact of manmade environmental degradation on people and communities.

Throughout her public career, Eleanor Roosevelt was known for visiting coal miners, going down into the dark mines in order to understand the working conditions of the men who dug the coal out of the earth. Over the years, she spoke not only in support of the rights of these workers to form a union but to improve the health and safety standards of the mines in which they worked and the healthcare they received.

She was as concerned about their lungs as she was about the union ballot. And because of her work and legacy, no one today thinks twice about the right of workers to demand a safe and healthy workplace. Nor are we surprised to learn that there are governments and corporations determined to deny workers these very fundamental rights.

When Eleanor Roosevelt chaired the very first Commission on Human Rights at the newly formed United Nations, she brought this same perspective to drafting the Universal Declaration of Human Rights, the very bedrock of human rights standards in law.

The universal declaration sets forth in clear and simple terms the basic rights of every individual and all peoples, regardless of where they live or under what type of government or in what religion, philosophy or ideology they believe, and spells out the fundamental political, civil, economic, social and cultural rights of all members of the human family.

I believe in the universal declaration. I believe in one body of rights. In America, no one questions that each and every one of our children has a right to go to school and is required by law to attend school. Yet you might not know, let alone appreciate, that education is a basic human right under the universal declaration.

We also understand that everyone needs food, shelter, clothing and medical care for their own health and well-being and that of their family. Yet few of us know these are basic human rights enshrined in the universal declaration.

So what happens when your water and land are poisoned, your food disappears and your traditional means of livelihood disintegrates? Do you have any rights to protect them? To fight for them? To demand redress?

This morning we will investigate how international law, standards and practices in the area of the environment, basic human rights and the rights of indigenous people might answer these questions.

We will also look at the case studies in Ecuador, Nigeria and West Papua that we hope will bring affected communities vividly to life. They are in some respects better known because of the degree of exploitation and harm done to the environment, the surrounding communities and their leaders. In each case, the judicial system and courts have become engaged to rule on key elements of how local communities were affected. They take place in very different parts of the world and under very different political settings.

For degradation of this magnitude to occur, such basic rights as freedom of opinion and expression, peaceful assembly and association, even the right to life, liberty, and the security of a person were threatened and violated.

And with respect to indigenous peoples, the very rights of communities to their lands and territories and thereby the traditional knowledge, culture and spirituality were violated, often willfully and deliberately by companies, governments and security forces but also casually and with great indifference, as if these people's rights, well-being and values were of little or no consequence.

In each case, the initial exploitation began years, even decades, ago. But the consequences are still being felt in the very lives of tens of thousands of people whose basic rights to life, health, dignity and community continue to be violated.

Last November I traveled to the northeastern country of Ecuador. I had been told very conflicting stories by affected communities and representatives of Chevron Corporation about the history and the effects of oil production in the Amazon, so I decided to go to see it myself. I spent several days looking at the effects of the detriments of oil contamination on the environment of local communities. What I found was shocking: a superfund site about the size of Rhode Island in the Ecuadorian Amazon.

I visited one religious community that had been forced to move three times to try to escape the oil pollution and contamination that was killing the fish, driving the local game, destroying medicinal plants, and sickening the community, including the children. Despite moving, they still couldn't escape the impact of the oil. And I can see in here the determination and desperation to survive as a people and as a culture.

When I returned home, I began to explore where else there are similar tragedies, similar cases, similar people struggling to be heard. As in Ecuador, these human environmental crises take place in remote areas. You don't find them in national capitals. They are invisible to the urban dweller, the average tourist, the visiting dignitaries.

But in jungles and forests, on mountaintops and distant river valleys, great harm is being done to poor rural people and their land, and in general, the rest of the world neither hears or knows about it until decades after the first major wave of damage has been done.

For the most part, these people and communities are voiceless. Until a court case begins to reach conclusion or an important community leader has been assassinated or a

major publication writes a story, then a certain level of discomfort begins to be felt by special wealthy and corporate interests.

It is for this reason that today's hearing chose to focus mainly on hearing from representatives or spokesmen of these communities. We do not preclude from consideration a hearing in the future with representatives of Freeport that mine copper and gold, the Shell Oil Corporation, the Chevron Corporation and other U.S. and international companies whose environmental practices have often come under international scrutiny and criticism.

Before I introduce our first panel, I want to thank Hansol Greffer and Andrew Fazio for organizing today's hearing. And I would now like to introduce the first panel.

First, Dinah L. Shelton. Professor Shelton joined the George Washington University Law School faculty in 2004. Before her appointment, she was a Professor of International Law and Director of the Doctoral Program in International Human Rights Law at the University of Notre Dame Law School from 1996 to 2004. She previously taught at Santa Clara University and was a visiting lecturer at the University of California, Davis, Stanford University, University of California, Berkeley, the University of Paris, and the University of Strasbourg, France. She is the author and editor of a number of prize-winning books. She serves on the boards of many human rights and environmental organizations and was made an honorary European to join the European Council on Environmental Law.

She has an incredible background. And from 1987 to 1989, she was the Director of the Office of Staff Attorneys at the U.S. Court of Appeals for the Ninth Circuit. She has served as a legal consultant to the United Nations Environmental Program, UNITAR, World Health Organization, European Union, Council of Europe, and Organization of American States.

Also with us, and we are proud to have him, is Marcus A. Orellano. He is a lawyer from Chile and the Director of the Human Rights and Environment Program at the Center for International Environmental Law since November 2002. Prior to joining that, prior to joining that, he was a fellow to the Lauterpacht -- did I say that right -- Research Centre for International Law at the University of Cambridge in U.K. He is also an adjunct professor at American University, the Washington College of Law, where he has lectured on human rights and the environment, investment trade in human rights law, and the international institutions in sustainable development.

We are really privileged to have both of you here to give your perspective. Why don't we begin with you, Ms. Shelton.

STATEMENT OF DINAH L. SHELTON, GEORGE WASHINGTON UNIVERSITY
LAW SCHOOL; MARCOS ORELLANO, CENTER FOR INTERNATIONAL
ENVIRONMENTAL LAW

Ms. SHELTON. Thank you very much, Congressman McGovern. Please excuse my voice. I flew back from California last night, and I didn't bring the swine flu, but I did bring a cold.

Mr. McGOVERN. You sound great.

Ms. SHELTON. Thank you very much for organizing this meeting, and I am very pleased to see Tom Lantos' name on the Human Rights Commission. For many years when I taught at Santa Clara, I lived in his district, and I have great respect for him.

The issue of the linkage between human rights and environmental protection dates from the very beginning of both domestic and international environmental law. In fact, at the 1972 Stockholm Conference on the Human Environment, the United States delegation proposed to add the right to a safe and healthy environment to the Stockholm Declaration. The exact language wasn't approved, but the linkage was in Principle One of the declaration.

Since that time, more than 100 countries around the world and eight states within the United States have adopted constitutional provisions referring to the right to environment for the people as part of the Bill of Rights or as a state obligation. And increasingly, these rights are being viewed by courts as justifiable and enforceable.

Even in areas where there has not been this explicit language, the links have been increasingly recognized in two senses. First, that environmental degradation can undermine or even destroy the ability to enjoy fundamental human rights, civil, political, economic, social and cultural.

As you mentioned, the right to work, to have safe and healthy working conditions, is something that has long been recognized at the International Labor Organization.

Secondly, and flipping it around, the violation of certain human rights also impedes environmental protection. When individuals do not have the information, their right to information is denied, they have no ability to participate in decision making and no due process or access to justice, the environment suffers as a consequence.

And what we see in country after country and region after region is that the most vulnerable groups, the poorest, those who are in the rural areas, minorities, indigenous and children, are the most heavily impacted. Desmond Tutu has come up with a rather dramatic phrase to express this. He calls it adaptation apartheid.

The consequence has been that every international human rights body, many of which the U.S. participates in globally and regionally, has received complaints or information about the linkages between human rights and environmental harm. Cases have been brought nationally and to regional courts and commissions which have issued judgments finding governments responsible for acting or failing to act to respect the rights of people by causing or allowing severe pollution or deprivation of the resources on which they depend.

Both human rights violations and the types of environmental degradation that occur normally violate national law as well as international law, thinking of cases involving the illegal dumping of toxic and hazardous waste and products, illegal logging, or mining that is done in violation or without proper permits.

The activities and the resulting harm often result from the joint action, as you mentioned, between state actors or agencies and private enterprises. This has led to more than 200 initiatives and corporate codes of conduct nationally and internationally as well as numerous lawsuits for corporate complicity in acts ranging from forced labor and resettlement to extrajudicial killings.

Now I think this affects the U.S. interests in three specific ways. One, the environment knows no frontiers. So, unlike what they say on TV, what happens in Vegas

doesn't stay in Vegas; what happens in Ecuador doesn't stay in Ecuador. The environment is interlinked globally.

Secondly, how U.S.-based multinationals act reflects on the U.S. as a whole. While most of them are ethical, some are not, and this is hurting our national reputation internationally.

Thirdly, when rights are violated and areas become uninhabitable because air, water and soil are poisoned, people will go elsewhere. Migration, especially large movements of people, sometimes into refugee camps, sometimes illegally into other countries, causes further environmental and humanitarian problems, can exacerbate ethnic tensions, and may in fact lead in the long run to armed conflict. Prevention is far better and indeed the only workable approach in the long run.

So, in terms of what we can do, there are several recommendations that I would actually make. One is please don't touch the Alien Tort Statute. There has been some movement to amend it, to restrict its operation. But I think that there is a need for victims to be able to hold accountable and follow when necessary multinational companies to their home states in order to hold them accountable. Perhaps in the State Department reports we could have more about environmental conditions and the impact that these have on respect for human rights.

There is a U.N. declaration on human rights and the environment that has been pending now for more than 15 years in the United Nations which the United States could support. So I think there are a number of specific things that could be done, and I thank you for the opportunity to make these comments to you. I am available of course for questions.

[The prepared statement of Ms. Shelton is unavailable]

Mr. McGOVERN. Thank you very much. Mr. Orellano.

STATEMENT OF MARCOS ORELLANO

Mr. ORELLANO. Thank you, Representative McGovern, for your introduction and for the opportunity to present testimony in this hearing. I am also delighted to share the panel with Professor Shelton, who is one of the world's foremost figures in this field, the field that has developed over the least 30 years, three decades that have witnessed a steady process of integration between human rights and the environment.

This integration recognizes that society cannot prosper in a degraded environment and that environmental pollution and degradation affect life itself.

All around the world people long for freedom. And this freedom includes freedom from pollution, the right not to be poisoned to death by toxic chemicals, the right to secure food and clean water. These rights are essential for life itself and for life and dignity.

They are however often compromised by government plans imposed on local communities without adequate consultations. They are often compromised by corporate activities that make a profit out of other people's suffering.

As with freedom, people around the world aspire to take ownership over their future. It is a fundamental principle of democracy that those affected by decisions have a say in the decision making process. When those decisions affect the environment, a right

to environment ensures that this principle of democratic inclusion is given effect through the rights to participate, access to information and access to justice.

The right to a healthy environment is not an obstruction. The earth is the living space that provides sustenance to our generation. As such, a safe and sustaining environment is a precondition for the enjoyment of all human rights since individuals and societies can develop their potential only in an environment conducive to a healthy life. As such, we bear a duty to future generations so that they may also enjoy a right to a healthy environment.

In these few minutes, I would like to touch upon three points relevant to the human rights and environment linkage: first, certain elements of the controversy regarding the rights to environment; second, recent developments concerning the rights of indigenous peoples; and third, implication of the rights to environment in the efforts to address climate change.

So, in connection with the controversy over the rights to environment, some have opposed the notion of a right to environment, arguing uncertainties regarding its holder, its scope and content and the duty-bearers.

In connection with the holder of the right, for example, it has been argued that it is not possible to determine who holds the right to environment given its diffuse character. In this regard, it should be noted that the right to environment is both an individual and collective right. Individuals have the right to privacy of home, protection of property and the right to life, all of which can be affected by pollution and unsustainable extraction of natural resources. But the right to environment is also collective as peoples can also only exercise the right to self-determination in an environment conducive to life and development.

Second, in regards to scope and content, it has been noted that it is not possible to determine a priori a right to a certain level of environmental quality that is universally relevant and shared. This argument however overlooks the fact that human rights embody a level of abstraction that allows their application in multifaceted situations and that human rights bodies and courts are able to recognize infringements in varying factual contexts.

In addition, where countries have adopted regulatory frameworks to address environmental risks, a right to environment ensures that individuals and communities are not exposed to risk levels below the minimum.

Finally, in relation to duty-bearers, it has been argued that it is not possible to clearly identify who bears the duty to respect a right to environment. However, human rights law recognizes state responsibility not only for the state's own actions but also for failing to effectively regulate the actions of third parties that interfere with protected rights. Consequently, countries have an obligation to take effective measures to ensure a right to environment.

Despite the concerns of naysayers, the right to environment has been recognized in binding treaties in the Americas and in Africa as well as in the constitutions of numerous countries. In Europe, the European Court of Human Rights has decided a number of environmental cases, thereby showing how environmental pollution and risk can interfere with the enjoyment of civil and political rights.

Also, over the last decade or so, the international community has recognized the need for special measures of protection for indigenous and tribal people's rights to ensure

their survival. This is the second point I would like to address. Historically, indigenous and tribal peoples have suffered human rights violations as a result of the unsustainable extraction of natural resources from their territories. Extraction of minerals, oil and gas, timber and other natural resources have resulted in environmental degradation, forceful displacement, and all too often slavery, forced labor and death.

Examples of this historical and present reality can be found all around the world. Given the global dimension of this problem, the United Nations has elaborated a declaration on the rights of indigenous peoples, including the recognition of the right to environment.

Given the close relationship between indigenous and tribal peoples and their lands and territories, special measures of protection are necessary to ensure their survival. As the Inter-American Court of Human Rights has recognized, for indigenous peoples, land is not another commodity but the source of physical and spiritual well-being.

And to ensure that concessions over natural resources do not threaten the survival of groups, the Inter-American Court of Human Rights has elaborated the system of safeguards resting on three pillars: first, prior environmental and social impact assessments; second, effective consultation and free and prior informed consent in projects involving large impacts; and third, benefit-sharing agreements.

To be sure, concessions that do not abide by these safeguards are illegal under human rights law. Indigenous and tribal peoples are not only threatened by extraction of natural resources from their lands and territories. Also, given their physical and cultural integration with nature, climate change poses a direct and serious threat to their well-being.

This is the third point I would like to address, the connections between human rights and climate change. The impacts of climate change are already interfering with human rights. Climatic viability affects access to food and water. Intensifying storms, hurricanes and typhoons affect the right to life and property. A rising sea level and increased droughts will force millions of peoples out of their homes and pastures.

For these and other reasons, the U.N. Human Rights Council has already recognized that climate change threatens the enjoyment of human rights. Human rights are not just threatened by the physical impacts of climate change. Measures adopted to respond to climate change, including mitigation and adaptation skills, may involve displacement, local pollution and restrictions in forest use. In this regard, access to environmental information and risks is essential to ensure adequate participation of the community in the development of plans to address climate change.

Finally, owing to the global nature of climate change, no one nation can solve this problem acting alone. Cooperation is central to achieving an equitable and effective solution to climate change. The United States, given its historical contributions as well as its financial and technological capabilities, has the moral and legal duty to exercise leadership in addressing climate change.

So, to conclude, in this day and age, it can no longer be seriously doubted that people have the right to live in a healthy and balanced environment. Environmental pollution and degradation compromise the ability of individuals to lead a healthy life and to enjoy life itself. Environmental pollution and degradation interfere with the ability of societies to prosper and with societies' efforts towards sustainable development.

In this light, a right to environment is a precondition to the enjoyment of all human rights because it safeguards the space where those rights can be exercised. Thank you.

[The prepared statement of Mr. Orellano is unavailable]

Mr. McGOVERN. Thank you very much. I appreciate both of you being here and for your thoughtful testimony.

We have been joined by Representative Cao of Louisiana and Representative Schakowsky of Illinois. If anyone wants to make an opening statement. Ms. Schakowsky?

Ms. SCHAKOWSKY. Well, let me just say how relieved in a way that I am that we are now at the point finally where we are talking about what the impacts are and we take for granted or at least there is a consensus now that this is really happening. And like everything else, the main people who will disproportionately be affected by climate change are the poor. And because 70 percent of the people that are poor are women, women will be disproportionately affected.

I was listening to a pretty devastating scenario of what the world could look like in, I don't know, 20 years, 30 years from now if we do nothing, and it really answered the question about why should we in particular care about this because we have all kinds of ways that we can mitigate against the effects here in wealthy nations like the United States.

But they talked about environmental refugees that would be pressing north, the kind of disease and famine and shortage of water. I live on Lake Michigan. The Great Lakes are 20 percent of the world's surface water. There is going to be tremendous competition for that water.

And so it is really, really important I think that we think about, plan for, mitigate the effects of climate change, particularly on the rights as we are talking about today of indigenous and traditional people. So I really appreciate that. I am sorry that I wasn't here for the complete testimony. I am glad that I have it and I am glad to participate. Thank you.

Mr. McGOVERN. Thank you. Mr. Cao?

Mr. CAO. Yes. Again, I just would like to express the same idea that climate change does not have any borders. And I believe that we in the first-world countries along with the countries of Europe and other countries who have a lot of issues concerning pollution have to look at this particular problem that we are presently facing and hopefully that we can learn to basically initiate ways in order to address this problem, which I believe not only affects indigenous people but basically people around the world.

So I am glad to be here and to be part of this conversation. Thank you very much.

Mr. McGOVERN. Thank you very much.

I have a few questions. You know, the annual country reports that the State Department submits to Congress really focus very little on the issue of the environment. You know, I came back from Ecuador. I sent a letter to then-Secretary Condoleezza Rice, along with Howard Berman, the Chairman of the Foreign Affairs Committee, kind of raising this issue as we looked at the report on Ecuador. There was barely a mention. And yet when you are there, you realize that it is a human rights violation that people have to live in these conditions.

We got a response back saying thank you for your letter. You know, as we prepare for the 2009 Human Rights Report Worldwide, we will consider carefully your recommendations, that we include expanded information on the impact of environmental degradation on the rights especially of indigenous people. So hopefully somebody is thinking about that.

But I would be curious from both of you, what recommendations would you have to the State Department on what they should be doing in terms of highlighting this stuff in terms of their country reports? Professor Shelton?

Ms. SHELTON. Well, one thing they could be doing particularly in the Western Hemisphere since we are a member of the OAS, the American Declaration On The Rights And Duties Of Man is used to judge our behavior as well as other countries, would be to look at the list of rights in the American Convention and the optional protocol to it, which includes a right to environment for those countries that are parties to it because that is the standard by which they should be judged.

And there are a number of countries in Latin America that have ratified the protocol on economic, social and cultural rights. And so those rights could actually be the ones that should be included within the country reports.

And like you, I have been to Ecuador many times. Most recently, I was there the entire month of February, and I have been to Amazonia as well. And I have also talked to some of our representatives in other countries who have talked about the linkages between some of the problems in the extractive industries like gold mining and the use of child labor in those mines so that just as it hits women, it also hits children disproportionately. And I think including more of that type of information, judging states by the standards they themselves have accepted, would be appropriate.

Mr. McGOVERN. Mr. Orellano?

Mr. ORELLANO. I would add that the State Department could also revisit its position with respect to the U.N. Declaration on the Rights of Indigenous Peoples. If the State Department were to recognize that its opposition to this declaration is no longer founded, that several of the countries of the handful of countries that voted against this declaration have already changed their position in relation to this declaration, then it would allow for another tool for the U.S. State Department to elaborate its reports with due consideration to the rights of indigenous peoples. It would be a concrete recommendation.

A second point that could be raised is that the State Department in its country reports and more generally could advance the idea of the duty to conduct environmental and social impact assessment before providing financing and insurance. Not that the State Department itself provides financing and insurance, but if it officially supported export credits or insurance, for example, managed by other agencies of the U.S. Government, then the State Department could have a say in that.

Mr. McGOVERN. The letter I received back from the Department of State says Article XXV of the Universal Declaration of Human Rights does not refer to a right to a healthy environment. Do you have any comment on that? I mean, I read it a little differently.

Ms. SHELTON. It is not surprising. It was written in 1948. The U.S. didn't pass NEPA until the late 1960s. The environment was not an issue in the 1940s in the way it became in the 1960s and later. So it's not surprising that it isn't mentioned explicitly

there. But if you look at the more recent human rights instruments adopted both regionally and globally, it is mentioned. The Convention on the Rights of The Child speaks explicitly of the right to safe and healthy drinking water and nutritious food for children.

Mr. McGOVERN. Yes. Right.

Ms. SHELTON. And the regional instruments also contain that. So I think it's a little disingenuous to say that an instrument that was written 20 years before the environment became an issue doesn't mention it.

Mr. McGOVERN. Mr. Orellano?

Mr. ORELLANO. On that same note, the European Convention on Human Rights does not mention the right to environment either. And that has not been an obstacle for the European Human Rights Court to recognize environmental cases and link environmental degradation and pollution with infringements on the right to life, with the right to life, with the right to privacy, right to information and other protected rights.

So the fact that a given instrument concluded at a given point in time does not mention a particular language does not mean that it is incapable of addressing that problem. In contrast, the flip side of this is that treaties and international instruments are living documents and they need to be interpreted and adapted to the conditions, to the current conditions, so that they have meaning in our current circumstances.

Mr. McGOVERN. Okay.

Ms. SHELTON. I just wanted to add because that was an excellent point that national courts, for instance, the Supreme Court of India, have similarly found implicit in the right to life that you have to have basic environmental conditions in order for your life to be ensured.

Mr. McGOVERN. So I just have a few more quick questions. Professor Shelton, could you go into more detail why it is important for the tort statute that allows victims to bring suits in the country of the violating company and which tort statute are you referring to and how has it been useful?

Ms. SHELTON. 28 U.S.C. ' 1350. Many people are quite familiar with this because it has been in the literature, legal literature, quite a bit. There have been a number of cases since the landmark *Filartiga* case in the 1980s that first invoked the statute passed by the first Congress against a torturer who was found within the United States. And the victim's family was also in the U.S., became aware of his presence here. They could not go back to Paraguay to sue him. They had tried, and their lawyer was disbarred and jailed for bringing the case.

Very often there are no remedies in the place where the pollution or other violations of human rights have occurred. The only jurisdiction which is available is within the United States. And it has been extremely important in many cases where victims have been able to come into a court, be heard for the first time by a neutral fact-finder who says yes, your rights were violated, wrong was done to you, and to hold accountable those who committed the wrong.

Initially it was invoked against state agents, but increasingly it has been invoked against U.S. companies. One of the first cases was actually settled. Other cases from longstanding periods are still in litigation because there have been a number of barriers that have been raised in terms of discovery, form nonconvenience, et cetera.

There are a number of legal questions, but I think the courts can settle those, can appropriately decide which cases belong here and which cases there may be an alternative appropriate forum that is more appropriate to hear them. But the first corporations that were sued immediately began calling human rights bodies to help them draft codes of conduct, so it has an impact on them to allow these kinds of lawsuits to be brought.

Mr. McGOVERN. You know, let me ask you this. I understand how and why states should be held accountable for violations against their people, and I understand that you can take companies to court. But don't corporations also have responsibilities to respect the people and communities affected by their operations regardless of how lax or how corrupt or complicit a state might be in resource exploitation? And how do we hold these companies accountable?

I mean, one of the things that you will hear from the companies that may have been involved in some of this contamination is look, you know, the government said okay, their environmental office said okay, and everybody, you know, sometimes these governments are there for two months at a time and there's somebody new. They can literally fall apart, these rules, so leave us alone.

Shouldn't there be some standard or something where these companies and corporations that have an obligation regardless of how corrupt a particular government might be to uphold a certain standard, and how do we do that?

Ms. SHELTON. Well, there are a number of codes of conduct, voluntary codes of conduct, that have been adopted that are providing some standards in terms of what a reasonable corporation ought to do in these circumstances.

To plead lower standards of the foreign country I think is not accurate. And I think, going back to the European cases that Marcos cited, in every single one of those cases, the government was failing to enforce its own laws.

So a corporation should go in and at a minimum respect the laws of the country where it is operating. The fact that the government there does not do so should not be an excuse for the corporation itself to violate those laws. We have seen in other circumstances the anticorruption and anti-bribery statutes. The fact that a foreign government may seek a bribe is no defense for a corporation here that pays it.

Mr. McGOVERN. Right. Mr. Orellano?

Mr. ORELLANO. Yes. I would just add that certain treaty bodies in the human rights system, for example, the Committee on Economic, Social and Cultural Rights, has elaborated on the duty of the home state, the state that grants the corporation nationality and that allows it to exist, the duty of that state to regulate it effectively so that the activities of that corporation in other countries do not result in damage to the natural environment or to the people living therein.

So this is an area where the law is evolving and it is moving in that direction. And it is no defense that the state hosting the investment may be soliciting bribes or may have inadequate laws and regulations. It is also the responsibility of the home state to ensure that there are no double standards, that corporations will not do elsewhere what they --

Mr. McGOVERN. Do we do that? I mean, does the United States? You know, we are the home state in some of these cases. I mean, are we doing that? Are we

overseeing and making sure that we sign off on all this stuff? What are we not doing that we should be doing?

Mr. ORELLANO. To a very limited extent, in certain areas, there is extraterritorial reach of U.S. law such as with respect to corruption in the example cited. But when it comes to environmental pollution and degradation, there is not enough action on the table. I think that this is an area where much progress needs to be made.

Mr. McGOVERN. Mr. Cao, do you have any?

Mr. CAO. Yes, I just have a couple of questions. I heard when I got in here how you connect climate change in connection with some of the problems that the indigenous people are facing down there. My question, also in connection with the tort law questions that Mr. McGovern asked, with respect to climate change, for instance, besides specific acts, how could one distinguish one company as a culprit versus another when we are talking about climate change in general?

Ms. SHELTON. I think getting it down to the company level is very difficult. It is like getting it down to each individual's carbon footprint, and that is a very difficult matter. And I think in the negotiations that started with the Framework Convention, have gone through Kyoto, now into Copenhagen, there has been a great deal of discussion about whether accountability should be on a country basis, on a per capita basis, on emissions basis.

There are a lot of very difficult policy decisions that I think are going to have to be made in regard to climate change. And I think when we are looking at some of these cases that you will be hearing about in the second part of the hearing, we are talking really about immediate poisonous pollution being put into the water, the soil and the air of peoples now that is measurable immediately and that is causing deaths now.

I think it is much more long-term to consider how we are going to allocate reductions for climate change and responsibility of each company than to reduce its carbon footprint just as each individual have. But we haven't got that much time. Representative Schakowsky mentioned environmental refugees. The International Committee of the Red Cross noted that 1998, 11 years ago, was the first year in which there were more environmental refugees than there were refugees from armed conflicts. So these disasters are already having a major impact.

Mr. CAO. Could you provide me with some of the major areas of the world where we are seeing the effects of climate change with respect to the indigenous people?

Mr. ORELLANO. Yes. I would mention two areas that are significantly being impacted by climate change and where indigenous peoples are suffering these impacts.

The first one is in the Arctic where climate change is showing its greatest impacts given the dynamics of climate change in which indigenous peoples of the North are integrated in their culture and physical existence with the ice. And the melting of the permafrost, for example, changes in the migration patterns of animals and these kinds of situations are having a direct impact on their way of life, on their ability to secure sustenance and livelihoods and ultimately on their rights, including the right to property, since their houses are virtually washing away into the sea. Their whole communities are.

And a second area of the world where we can see this happening is in connection with small island developing states affected by sea level rise where even a few feet, a couple feet of increase in sea level rise means denial of access to water, fresh water and aquifers and other sources of water, homes being also invaded by the seas, increased

storms affecting these islands. So these are two areas geographically where we are already seeing these impacts that we can categorize as most vulnerable.

Mr. McGOVERN. Thank you. Ms. Schakowsky, any questions?

Ms. SCHAKOWSKY. Well, I look at these international conventions and I feel really ashamed that the United States and Somalia, for example, are the only two countries that haven't signed on to the children and CEDAW after all these years and indigenous people.

I mean, I realize that many signatories to those conventions, you know, they are not always to the letter or the spirit of them, but what impact would it have if now the United States would sign onto those international agreements?

Ms. SHELTON. This is exactly what we were discussing in California at the meeting there. The U.S. traditionally has been at the forefront, a leader in the area of human rights -- you mentioned Eleanor Roosevelt at the outset -- and was in the exercise of that leadership able to pull other states into accepting commitments, help in the development of institutions and procedures that have had enormous impact around the world.

Close to half the countries in the world now reference the Universal Declaration of Human Rights in their constitutions. And were we to again exercise that kind of leadership, we would have a moral and a legal voice to speak in forums where we don't participate right now. And I think that does have an impact short-term and long-term.

Ms. SCHAKOWSKY. So does the United States even go to those meetings?

Ms. SHELTON. Yes. In fact, I will say from my experience that I have sat in on a number of hearings in the Inter-American Human Rights Commission where cases have been brought against the United States. And the level of our participation in terms of the briefs that are filed, the discussions that are held with the Commission, the exchanges that go on is extremely good. I know we sent a delegation up to the Commission on the Status of Women. So, when we do sign onto an agreement, we take it seriously, and that is an important lesson for other countries as well.

Ms. SCHAKOWSKY. But even when we don't, I am saying, do we go to those -- I don't know what kind of gatherings there are around.

Ms. SHELTON. In a few cases, we have sent observers, but we don't always. We have had observer status even at the Council of Europe, the European system, for many years now, so we do have participation there. But we have not been participating in the U.N. Human Rights Council even as an observer recently.

Ms. SCHAKOWSKY. But I think the President has made statements about that, right?

Ms. SHELTON. Yes. The U.S. will be asking to be elected to the Human Rights Council this coming year. There is a document that has been circulated with the commitments that the Administration has made in terms of what it will do if it is elected to the Council. And I think it is so necessary because the Council, I won't use that awful phrase fatally flawed, but it is definitely flawed, and I think our participation can really help to improve it.

Ms. SCHAKOWSKY. Yes. Great. Thank you.

Mr. McGOVERN. Let me thank you both for being here. And again, I think what we are trying to highlight here is that the issue of environmental degradation needs

to be raised to a higher level and incorporated in our understanding and our interpretation of human rights.

And I think that became clear to me when I was in Ecuador, seeing people having to live under some very difficult circumstances because of the contamination and also the impact on indigenous people, as I mentioned earlier, just being forced, you know, constantly on the move because they go high on the land for everything, and if the land is polluted, they can't live. And so it really is an issue that I think deserves more attention, and I appreciate very much you bringing attention to this issue. Thank you so much.

We are now going to call up our second panel. Let me just introduce those who are going to be on the second panel. Steven Kretzmann, the Executive Director of Oil Change International. He has worked on energy issues and the global oil industry for the last 19 years. He had eight years with Greenpeace. He served as an environmental advisor to Ken Saro-Wiwa in the movement for the survival of the Ogoni people in Nigeria and was a co-founder of the Human Rights and Environmental Organization Project Underground.

In 1997, he conducted the first independent soil and water samples in Ogoni, which proved the Ogoni claim of Shell's pollution and the double standards on their land. He has also successfully campaigned to keep Florida's coast free from oil and gas drilling and represented various organizations at the U.N. negotiations. He founded Oil Change International in 2005 in order to carry out strategic systematic campaigns focused on the oil industry. He is currently campaigning for climate justice and coordinating ShellGuilty.com, an international coalition effort designed to force Shell to end gas flaring in Nigeria.

Octovianus Mote is a journalist and an activist from West Papua, Indonesia, now residing in the United States with his wife and his children. He first became involved in politics and human rights while studying at Parahyangan -- help me pronounce it -- yes, Catholic University in London where in 1981 he established the West Papua Students Association.

He was employed by Indonesia's premier national daily newspaper, *KOMPAS*, and after nearly 10 years of working in Jakarta, he was appointed Bureau Chief of *KOMPAS*. And between 1989 and 1997, he published many articles. He is currently working to develop a genocide database in Papua at Yale University's Genocide Program and in a book on West Papua while he serves on the Papua Resource Center, a New York-based NGO. And we are very happy to have you here.

Last but not least is Steven Donziger. He is a lawyer based in New York City who practices in the area of class-action litigation in international human rights. He is part of a team of lawyers representing several indigenous and farming communities in Ecuadorian Amazon who are suing Chevron for cleanup of what is considered to be the worst oil-related environmental catastrophe in the world.

He is the founder and Director of Project Due Process, a legal advocacy group for Cuban detainees who came to the United States in Mario Boat Lift. He is a former Director of the Non-Partisan National Criminal Justice Commission that produced the book, *The Real War on Crime*, of which Mr. Donziger was the editor. He has appeared on various national news shows. He is a graduate of Harvard Law School in 1991. And in the spirit of full disclosure, we did undergraduate school together, although I am a few years older than he is.

So we are happy to have all three of you here. Mr. Kretzmann, why don't we begin with you.

STATEMENT OF STEVEN KRETZMAN, THE EXECUTIVE DIRECTOR OF OIL CHANGE INTERNATIONAL; OCTOVIANUS MOTE, HUMAN RIGHTS AND ENVIRONMENTAL ADVOCATE, WEST PAPUA; STEVEN DONZIGER, LEGAL COUNSEL, INDIGENOUS AND CAMPESINO COMMUNITIES IN NORTHEASTERN ECUADOR

Mr. KRETZMANN. Thank you very much, Mr. Chairman and members of the Tom Lantos Human Rights Commission, for the opportunity to testify on the environmental and human rights concerns riding oil industry operations in Nigeria.

Sixteen years ago, late in 1993, I received a call from Ken Saro-Wiwa. I had heard of this Nigerian author and activist who was organizing nonviolently for his communities' environmental and social rights in Nigeria, but I wasn't yet familiar with the specifics of the Ogoni and other Niger Delta people's concerns for their environmental and human rights.

I remember listening with some initial skepticism as he told me of the constant gas flares, the oil spills not cleaned up for years and the collusion between the Nigerian military and the oil companies and in particular Shell.

Over the next two years, I coordinated what became Saro-Wiwa's final tour of the United States and helped investigate and confirm virtually all of the environmental and human rights abuses that he had first told me of and others that happened during the short time we knew each other.

When he was hanged in November of 1995, I wasn't skeptical anymore. I was deeply concerned and devoted to exposing the true costs, human and environmental, of oil production. In 1997 and again in 1999, I traveled to the Niger Delta to investigate these issues for myself. The following information is supported by my observations and the sources that I will cite.

Perhaps the most visible impact of the oil industry on the Niger Delta is the constant presence of gas flares. Hundreds of flares higher than buildings and louder than 747s burn night and day. In some cases, these flares have roared continuously for 50 years since oil was discovered in Nigeria. Many have noted the sad irony of children in the Niger Delta growing up without electricity but who have never known a dark night, living in the shadow of the flames.

Natural gas is a byproduct of oil drilling. In much of the world, this gas, called associated gas because of its association with oil production, is either used for energy or reinjected in the well. In Nigeria, Shell and other oil companies burn it in a process known as gas flaring. Nigeria flares more gas than any other country except Russia. At least 20 billion cubic meters of gas a year are burned, enough to meet much of the local energy needs of Nigeria and neighboring countries except that it is wasted.

Ken Saro-Wiwa wrote in 1992 that, ""As a final remark of their genocidal intent and insensitivity to human suffering, Shell and Chevron refuse to obey a Nigerian law which requires all oil companies to reinject gas into the earth rather than flare it. Shell and Chevron think it cheaper to poison the atmosphere and the Ogoni and pay the paltry

penalty imposed by the Government of Nigeria than reinject the gas as stipulated by the regulations."

The gas burned in flares is not the clean natural gas used for heating or cooking that we know. This gas is contaminated with toxic compounds, and the flares send huge toxic plumes into the air. Although the Nigerian Government has repeatedly tried to outlaw gas flaring, industry lobbying keeps weakening its regulations. Oil is responsible for over 90 percent of government revenue in Nigeria.

The Nigerian Government first moved to end gas flaring in 1969 when it ordered corporations to set up infrastructures to utilize the associated gas. Shell and other oil companies ignored this order. Oil companies were again ordered to stop flaring in 2005 when Nigeria's Federal High Court declared gas flaring as a gross violation of the neighboring communities' human rights.

However, Shell and other oil companies continue to make excuses and repeated deadlines have come and gone. As of December 2008, there were over 100 flare sites still operating in Nigeria, and according to OPEC figures, the volume of gas flared has actually increased over the last decade.

Regarding oil spills, an estimated 1.5 million tons of oil has spilled in the Niger Delta ecosystem over the past 50 years. This amount is equivalent to about one Exxon Valdez spill in the Niger Delta each year. Many of the spills have taken place in sensitive habitats for birds, fish and wildlife, leading to further loss of biodiversity and in turn further impoverishment of local communities.

The spills pollute local water sources that people depend on for drinking, cooking, bathing, laundering and fishing. They also release dangerous fumes into the air, sometimes rendering villages uninhabitable and causing serious illness for those who are unable to relocate. Many of the oil spills can be attributable to poorly maintained infrastructure, such as aging pipelines.

Spills take place even in areas the oil companies claim to have vacated. Shell claims that they have completely pulled out of Ogoni since 1993, which was in response to Saro-Wiwa's nonviolent campaign that declared the company persona non grata in Ogoni. However, Shell continues to ship oil across Ogoni through the Trans-Niger pipeline, the TNP, at a rate of 150,000 barrels per day and to pipe oil into the TNP through other flow lines that criss-cross Ogoni lands.

Spills have continued from these lines over the years. For example, according to Environmental Rights Action, a Nigerian NGO, on March 23, 2006, a Shell well in Ogoni started spewing oil into the air, destroying a large area of cropland as it rained down for three days.

These spills often catch fire as well. In fact, less than three weeks ago a fire broke out on the TNP in Ogoni, burning oil as it leaked from Shell's pipeline manifold. This was actually reported on in *The Wall Street Journal*. So more than a decade after Shell supposedly pulled out, the Ogoni are still suffering ongoing pollution from oil spills and fires on their land.

Adding to these environmental crimes was the fact that Shell and other oil companies maintained a close relationship with the Nigerian military dictatorship during the 1990s. I will focus on Shell because I am most familiar with its operations.

Shell was involved in the development of the strategy that resulted in the unlawful execution of nine Ogoni men, including Saro-Wiwa. Shell told the Nigerian regime they

needed to deal with Ken Saro-Wiwa and MOSOP, the Movement for the Survival of Ogoni People. Shell monitored Ken Saro-Wiwa and closely followed the tribunal and his detention.

Prior to the trial, Shell Nigeria told its parent company that Saro-Wiwa would be convicted and told witnesses that Saro-Wiwa was never going free. Shell held meetings with the Nigerian regime to discuss the tribunal, including the military president, Sani Abacha, himself. Shell's lawyer attended the trial, which in Nigeria is a privilege afforded only to interested parties.

Brian Anderson, the Managing Director of Shell's Nigerian Subsidiary, met with Owens-Wiwa, Saro-Wiwa's brother, and offered to trade Saro-Wiwa's freedom for an end to the protests against the company. At least two witnesses who testified that Saro-Wiwa was involved in the murder of the Ogoni elders -- this was the crime for which he was supposedly tried and executed -- these witnesses later recanted, stating that they had been bribed with money and offers of jobs with Shell to give false testimony in the presence of a Shell lawyer.

In support of these and related facts, I would like to submit a copy of All for Shell, a brief history of the struggle for justice in the Niger Delta authored by myself, Andrew Rowell and the Lowenstein Human Rights Clinic at Yale University into the record.

Mr. McGOVERN. Without objection.

Mr. KRETZMANN. In addition, human rights attorneys have sued Shell for human rights violations against the Ogoni. The case, *Wiwa v. Shell*, will go to trial on May 26, 2009, in New York City.

The brutality waged upon the Ogoni as a result of their campaign to protect their environment was an early and often overlooked war for oil. The World Bank notes the gas flaring in the Niger Delta is Sub-Saharan Africa's greatest historical contribution to climate change. The greed for oil that has devastated the Delta also drives the greatest global environmental challenge we face today.

Emissions from gas flares are equivalent to at least 9 or 10 million cars annually, and one World Bank estimate in the mid-nineties put the emissions at the equivalent of 56 coal plants on an annual basis.

When Saro-Wiwa finished his book, *Genocide in Nigeria*, in 1992, he outlined a 10-point course of action, including, ""Prevail on Shell and Chevron to stop flaring gas in Ogoni and other producing areas." He then wrote, ""The situation is tragic. The question is will the international community fold its arms and allow this 21st Century genocide." The answer to date has unfortunately been yes. I sincerely hope that the members of this commission can help us answer Saro-Wiwa's question differently.

[The prepared statement of Mr. Kretzmann is unavailable]

Mr. McGOVERN. Mr. Mote.

STATEMENT OF OCTOVIANUS MOTE

Mr. MOTE. Thank you, Mr. Chairman, for this opportunity. The West Papua of which I am talking, the size of the island is California State size, and the population on this island is 2 million and about 300. And from that 2 million, about 1,003,000 are West Papuan.

And let me say two things that really impress me in my work as a journalist and now as a human rights defender, one was when I was a journalist at *KOMPAS Daily*. My chief of -- said what Papua's -- is that lobbyists and -- lobbyists about that.

Second, when I was facilitating 100 representatives of West Papua to release -- back in 1998, these 100 -- said to the President -- why he at least he gave -- Mr. President, allow us to retain our name before we -- our name. And why that is a strong statement was it was stated whether this is some case, so called -- stated that she support that kind of policy.

The Papua people get attacked from outside in at least four major ways. One is a migration program by enemies in government. After 1999, when I was still a journalist back at home, there were 500,000 people moved from Dawa to West Papua. So you have an influx of transmigration. And then it is not improved in terms of spontaneous --

Secondly is West Papua has the richest natural resources, so we have mining from Freeport -- and petroleum. These two -- difference proves that Freeport -- and they say that that drove us in that way. And they send their lobbies up here you will see.

And then this petroleum is trying to make Papua as a -- therefore, they try to not use military or the guard, but later on, after BP started to exploit, softened their policy and tried to use police and military. They then -- lobby.

And the last is by the development of the government. Before 1998 West Papua was just fine, was not in urgency. And then now, in less than 10 years, and based on economy, there are 33 -- that extend. So that means there is now an influx of military opening these new -- and the military is backing out in -- and mining activities in West Papua.

The opposite of how West Papua responds on these attacks, many of them flee to Papua New Guinea. More than 1,000 are now in Papua New Guinea. But in Papua New Guinea they are not recognized as refugees in order to maintain their good graces with the -- government. So that's why they don't have any protection from refugee.

And then some are maintaining themselves into resistance movement. And so far it is the religious leaders, and those become police of Papua. But when you come, for instance, Papua -- they stigmatize those, as I said, pretty openly. So there is no clear distinction between the -- and human rights in Indonesia.

I share two of my personal experience when I encountered the Governor of West Papua trying to defend West Papuans' right. One was in 1998, the Governor of West Papua was -- who is now the Indonesian Minister of History. He was asking central government to stop transmigration problem because that really is no good for environment but also really attacked the basic right of the West Papua people.

And then I wrote the article into the *KOMPAS Daily*. Next morning he get a -- and then he followed me. He tried to deny because he was leaving that explanation to 43 military attachments from the embassy in Jakarta. So he said just leave it.

Then that same person, the Governor, when he was enacted as a Minister in Jakarta, he tried to raise about Papuans' issue in a very long, in-depth interview in *Tempo Magazine*. Three months after that interview they fired him, and then they send him as Ambassador in Italy. Now he is elected again because he is a friend of the current president in the military.

Second example is Governor of West Papua -- he was lending empowerment under Suharto. That is why he wasn't reelected for a second term. He did a long lobbying effort

in -- Island where everyone know that is an off base island. So he said if you have decided this, we are not free anymore.

The same Governor also tried to maintain Papua to stop from logging. But the current five president, Lucas Pala, said to him we cannot stop the logging because we need log for the -- now the same Governor -- also tried to maintain farm enactment in order to protect them in -- they faced same things from the central government.

Therefore, Congressman, the last point that I want to raise is visa. Visa economy is not working because under basic economy law, there is a -- legally recognizing -- strike through West Papuan people assembly. But they killed that institution. It first was stigmatized as a separatist institution, the institution they know by relation law.

Second, they asked a member of this institution people assembly, you too want to get -- without any assignment, so just gasoline, or you wanted to settle? So these men choose to settle because otherwise, they take them to work for very small amount of money.

So far West Papua is in the environment point of view is also getting attacked through the mining and logging and influx of the population. Then second, also because of this extending of the administration with the new commerce also giving them threat. Therefore, Indonesian Government always try to close the area. And up until now, Papua is the only area that you cannot visit there. Therefore, we need international praise especially from U.S. because U.S. is the only country that we can count on so that they open up that West Papua into international.

Secondly, make the dialogue between West Papua -- and Indonesia to solve the variety of the problems in the international facility as they did with Japanese. And the last thing is freedom of expression because for time being, West Papua is the only part of Indonesia that has no freedom of expression. Thank you very much.

[The prepared statement of Mr. Mote is unavailable]

Mr. McGOVERN. Thank you very much. Mr. Donziger.

STATEMENT OF STEVEN DONZIGER

Mr. DONZIGER. Thank you so much, Congressman McGovern, Congressman Cao and Congressman Schakowsky for holding this hearing. It is an honor to be here on behalf of the indigenous and farmer communities.

Mr. McGOVERN. Is your microphone on? There you go.

Mr. DONZIGER. Is that better?

Mr. McGOVERN. Yes.

Mr. DONZIGER. I have been working as a legal advisor to these communities in Ecuador for over 15 years now, and I have taken probably 100 trips to the region of Ecuador that Congressman McGovern visited. And I am counsel on a case called *Agiza v. Chevron Texaco*, which just by chance happens to be featured in *The Washington Post* today on page A12, so I wanted to call that to your attention.

This case seeks a cleanup of what some experts believe is the worst oil-related contamination on the planet, covering an area of rain forest the size of Rhode Island and

created largely by Texaco when it operated an enormous oil field from 1964 to 1990 in Ecuador. The environmental degradation of this area has today produced what I believe is a humanitarian crisis of epic proportions. A court expert in this trial that I am involved in recently found that 1,401 excess deaths from cancer have occurred in this region because of oil contamination.

And sadly, what is happening in Ecuador is not the only aspect to this story. The company that is now defending the lawsuit, Chevron, which bought Texaco in 2001, is spending significant sums of money on lobbyists and public relations consultants to evade accountability and to keep the full details of this story from the public, journalists, the company's own shareholders and the Congress, which is why I salute you, Representative McGovern, and your staff for holding this hearing. I think it is extremely important that the Congress and the American people know about this crisis and understand its connection to our country.

The basic facts are found in now almost 200,000 pages of trial evidence and 62,000 chemical sample results that have been produced in the trial. This is probably the most litigated environmental case in history.

The trial record fills a very large room in a courthouse in a town in Ecuador called Lago Agrio, which means sour lake in English. And the reason it is called Lago Agrio is because when Texaco discovered its first well in Ecuador in 1967, they named the town after a town that they had been operating in Texas called Sour Lake. And the well was discovered on indigenous Cofan territory, and just by chance, because the oil was discovered in this particular place, the big town and the region grew up around this well in indigenous land.

It is undisputed that Texaco as the operator of this oil consortium in Ecuador deliberately dumped billions of gallons of toxic waste directly into the Amazon to save money. Most of this waste is what is called production water, which in Ecuador contains a stew of highly toxic hydrocarbons, including the carcinogen benzene.

Texaco also built and then abandoned more than 900 toxic waste pits gouged out of the jungle floor. These pits largely were built in the early 1970s through the seventies and eighties. And if you go around Ecuador today, you can still see them. And I have pictures of them which I am going to show just one here.

This is a picture of a site called Shu-Shu Fendi 38, and I can give these to the committee. And this is a site that Representative McGovern I believe visited on his trip. And the amazing thing about this site is it has been there for almost three decades, and it was inspected during the trial process. Chevron's technical experts took soil samples at this site and found no contamination. And I will leave these pictures with the committee.

To this day, these pits continue to leach toxins into the surrounding soils, groundwater and streams. We estimate that at least 30 times the amount of oil spilled in the Exxon Valdez disaster has been dumped onto the ancestral lands and into the waterways of the indigenous groups.

In this area of Ecuador, the water, soil and air on which thousands of people depend is for the most part poisoned. Six indigenous groups inhabited the land where Texaco operated: the Cofan, the Sequoia, Wadani, Siano Quite, and Tetete. These groups had prospered for millennia before oil began to be extracted.

Today the oil contamination area has robbed them of their lands and devastated their cultures. The Tetete, who in the 1960s were a small tribe with few members, are

gone. I have made over 100 trips to the region, as I mentioned, and seen first-hand how the human rights of these vulnerable peoples are violated by intentionally reckless practices used to extract oil.

Aside from the environmental degradation, there are other millions of rights violations. I have seen how the victims have received death threats and harassment for exercising their legal rights to hold accountable those responsible. And I have also seen how the due process rights of the Amazonian residents, the communities that I am involved with, have been violated via legal maneuvers designed to ensure that this trial never end and that their legal claims never get resolved.

Texaco engaged in a lot of substandard practices in Ecuador. I am going to focus on one just to give you some sense of what was going on, the one that I would call an environmental pump-and-dump operation. When oil is extracted from the ground, it has two parts, the marketable crude and the formation water, which is essentially toxic waste, and these substances come out of the ground mixed together.

They were separated in Ecuador at 22 very large separation stations that Texaco built generally on high land. Each of these separation stations serviced 356 well sites, so there was a network of pipes that would go from the wells to the separation stations. What would run through those pipes is the mixture of the wastewater and the oil, the marketable oil that could go to commercial market.

I would say the worst outrage of this terrible tragedy was committed at these separation stations. On a nonstop basis every day for years, 24 hours a day, a torrent of this liquid waste gushed through these vast pipes into the Amazon waterways without treatment. The torrent flowed into the same freshwater streams and rivers that the indigenous groups had relied on for centuries for their sustenance.

At the height of its operation, 4 million gallons of this toxic waste was dumped daily in this fashion. Texaco pumped up the oil, took from it what they needed and dumped everything else that they didn't need, which was toxic waste.

Texaco's operation was substandard by any measure. And I hark back to the first panel talking about the standards companies try to use when they operate in different countries.

In Texaco's case, what they did in Ecuador clearly violated industry standards at the time. We have evidence, and it has been introduced at trial, that in 1962 the American Petroleum Institute put out a primer on how you should dispose of this toxic wastewater. And at that time, which frankly because it was an industry group was late, this had been going on for decades before the United States, all of this toxic wastewater was being reinjected in the United States thousands of feet underground.

Texaco ignored that practice in Ecuador. They ignored Ecuador in environmental law. Ecuador did not have a very strong legal regime to protect its environment at the time, but they did have laws on the books that prevented contamination. They were ignored by Texaco. Texaco had a contract with Ecuador's government that had a provision in it that prevented them from contaminating the environment. It was ignored by Texaco.

And I am happy to learn today, and I salute Professor Shelton and the previous panel on the international human rights issuance out there that protect people, but I can tell you that Texaco and now Chevron are ignoring those instruments.

There are health impacts to what happened in Ecuador. The best and most recent independent estimate of what is going on in terms of health was provided by the court-appointed expert, a man named Richard Cabrera, who worked with a team of 14 technical officials. They did a survey, among other things, to try to assess damages, and they surveyed 1,000 families who live in and around these oil production facilities. And they found 1,401 excess cancer deaths, analyzing these interviews as well as demographic area.

This is a highly populated area. Most places where there is a lot of oil contamination in the United States you would not find people living. If you go to Ecuador, you see people living in and around and literally on top of the contamination because Texaco, they did a supposed remediation where they dumped dirt on top of some of these pits. And the people thought they were clean. They would literally build their houses on top of the pits. But all the oil was still underneath, and it was contaminating the groundwater where they would build their wells and you could see this. And I think Jim, I think you, Representative McGovern, did see this when he was down there.

Other peer-reviewed studies have found elevated rates of oil-related health problems such as spontaneous miscarriages and genetic defects. Anecdotal stories of cancer are frighteningly common, and I am going to submit to the committee the various peer-reviewed health studies that show an increase in oil-related cancers and health problems.

Now while it is difficult to measure the human health impact of the contamination, it is near impossible to measure the psychological impact that this pollution has caused to the people of the region. There is a loss of dignity that comes with a parent being forced to watch a child get sick with stomach cancer because they are forced to drink contaminated water and eat food grown in polluted soils.

And I can tell you that the vast, vast majority of people in this region do not have the economic means to move away. And certainly the indigenous people who this is their ancestral homelands do not want to move away. And this is the reality that these families are forced to deal with daily.

The team of lawyers and advocates fighting Chevron in Ecuador's courts over cleanup responsibility I believe have suffered retaliation for exercising their legal rights, as documented in a letter sent to the International Commission of Jurors that we will make available to this committee.

Just to mention a couple of examples. The lead lawyer for the rain forest communities, Pablo Fihardo, has been subjected to death threats. Pablo Fihardo is a great man. He is a personal friend. He is a CNN Hero Award winner, and he is a Goldman Prize Award winner. In 2004, when the judicial inspections were starting, I noticed he was missing from the initial inspections, and I was told that he was hiding out because his brother had just been murdered about a year after the trial began under mysterious circumstances that many think was a case of mistaken identity.

The law offices of the plaintiffs, that is, where our local group of lawyers works, and the court-appointed expert, Mr. Cabrera, have been robbed of case-related materials while other materials of value in these offices were left untouched.

An atmosphere of fear has pervaded the trial. At one inspection where several indigenous leaders had announced their intention to participate, Chevron's lawyers arrived escorted by a heavily armored military vehicle that looked like a tank. On several

occasions, the Chevron lawyers would show up at these hearings escorted by armed Ecuadorian soldiers. We protested greatly, and eventually the practice stopped, but this was interpreted by the local indigenous groups as intimidation, and it later came out that Chevron was paying local Ecuador military officers for this service.

Not content with its preferred court in Ecuador, and I say that because this case was originally filed right here in the United States using the Alien Tort Claims Act, among other causes of action, in Federal Court in New York, 1993, Texaco fought for nine years to get this case sent to Ecuador. They submitted 14 affidavits from experts praising Ecuador's courts as fair and adequate.

We fought very hard, some of my colleagues are here with me, for years at tremendous expense. And while people continue to suffer, while the pollution continued to leak from these pits into the groundwater which people relied on for their drinking water, Chevron won that battle. The case went to Ecuador. I think they thought we would disappear. I think they thought we would go away. We didn't. We kept going.

What has happened is once the evidence started to come in and it started to point to Chevron's culpability, they decided to attack Ecuador's court process. And now they have hired lobbyists in Washington, some of them former high government officials like Mickey Kantor and Mack McClarty to try to use our nation's foreign policy to "punish the country of Ecuador for allowing its own citizens to use their courts to sue an American company."

To me, this is bad faith, and I think Chevron is operating in bad faith in Ecuador. And I think that they agreed to submit to jurisdiction in Ecuador and be bound by any ruling in Ecuador as a condition of the case being sent to that country out of U.S. Courts over the objections of the Amazonian communities.

So I want to thank this committee, and I want to thank the other panelists. And I am heartened to know that there are international human rights instruments in place that deal with these issues.

However, I will say that on the ground, the struggle is intense. I think the more people that know about it the better it is going to be for the safety and the human rights of the people who are fighting this battle in Ecuador. And I urge this committee and others in Congress to call as much attention as possible to this issue. Thank you.

[The prepared statement of Mr. Donziger is unavailable]

Mr. McGOVERN. Thank you. Anything?

Ms. SCHAKOWSKY. No, I don't think so. Wow. Do we have copies of the testimony?

Mr. McGOVERN. Yes, we have copies of all the testimonies. I appreciate very much you all being here.

Let me just ask a question. Since U.S. companies are involved in all these cases here and they are all tragic cases, we talked about that there are instruments in place, human rights safeguards in place. Clearly, they are not working in the instances that you cite.

I am curious, you know, you all, clearly I am sure you have all reached out to the U.S. Embassies in the various countries here, maybe even come here and talked to people in the State Department. What has been the reaction that you have received from the U.S. Government in the face of the terrible situations that you describe?

Mr. KRETZMANN. Well, over the last eight years, the reaction has not been very favorable. Certainly the State Department under the Bush Administration did everything it could to discredit the Alien Torts Claims Act and the ability of citizens to hold corporations to account for their actions overseas. That said, I think there are quite a few things that could be done that would be very positive, and we are certainly hearing better noises these days from various parts of the Administration and of course from Congress and this committee.

There is a number of transparency and best practices initiatives, such as the Extractive Industries Transparency Initiative, and publish what you pay. These things would actually go a good way toward actually revealing a lot of what is going on. There is accountability, such as strengthening the Alien Torts Claims Act, and making sure we defend that.

And then I think perhaps most fundamentally on a number of these fronts, there is the fact that we need to hasten the transformation to a new energy economy that doesn't require us to continue to do this. And the United States Government continues to fund the oil industry overseas to the tune of billions of dollars a year via the U.S. Export-Import Bank, via the Overseas Private Investment Corporation, via the World Bank and other multilateral institutions. This funding often supports some of these cases that we have been talking about, so ending that I think would be a fantastic step forward.

Mr. McGOVERN. Mr. Mote?

Mr. MOTE. For West Papua case, embassy in Jakarta, U.S. Embassy in Jakarta usually not clear, because the Papua Ambassador later on worked for Freeport and Moran and so they kind of had double standard. They on one hand support big company and then -- that is why they ignore many human rights violations. They say there is nothing we can do because it is Indonesia. So I think now more progress, the embassy has one Papua desk, but that desk has not really played an important role in order to report. The last report on human rights was way, way better than before.

But in our experience, there is a couple of times visit the department, Human Rights Commission in the State Department also first aided because they never count by the whole entire State Department.

And one of the reasons I ask now is that we hear that the Human Rights Bureau is kind of kicked out from the present Administration's building. That is a really bad signal because if you are physically out from the main building, it is not that human rights has not become an important point. So I think this is a very important signal for us to really pay attention to human rights.

Mr. McGOVERN. Mr. Donziger.

Mr. DONZIGER. Well, generally speaking historically in Ecuador, the U.S. Embassy has tried to help Texaco solve its problems. We have numerous internal documents that have been obtained through the discovery process of the trial.

In the early 1990s, after the case was filed in U.S. Court in 1993, Texaco hired a former U.S. Ambassador to Ecuador as a consultant to it to help solve its problem there.

And unfortunately, I think the U.S. Embassy in Quito has really taken sides and has done what it can to help an American company. They probably think it is part of their job. I don't think it is. I think there is larger values and objectives of U.S. foreign policy generally like strengthening the rule of law and strengthening civil society, civil

justice, that would take precedence over the U.S. Government trying to interfere in a pending legal matter.

I think we are past that point in recent years. I think this case has grown to a point where and the U.S. Government has come to the realization that it is best to let the judicial process take its course. But it requires regular vigilance on our part because, just to give you one quick example, for years and years, we could never get a meeting with the U.S. Ambassador in Ecuador. Texaco's representatives met with the U.S. Ambassador constantly. It was almost like they had strategy sessions.

So while things have improved, it is very important that really all governmental entities, be they the U.S. Embassy, the U.S. Government or the Ecuadoran Government, steer clear of the legal lawsuit and let it work itself out and finish.

Mr. McGOVERN. I guess the problem with litigation, and in Ecuador it probably applies everywhere else as well as that, you know, it could be a never-ending process where there is not a resolution. You know, who knows how this case turns out? But my guess is that if the Ecuadoran Court decides in favor of the people of the area that has been contaminated that Chevron would appeal and it will go on and on and on.

I guess what we need to try to figure out is how do we resolve these things so that actually the help gets to the people who need the help immediately. They don't need it 20 years from now or 50 years from now. They need it now.

And to the extent that -- and I appreciate, Mr. Mote, you saying that the Embassy would oftentimes say it's an Indonesia problem, not our problem -- and it is kind of an easy way to escape responsibility. But we do have responsibilities. If it is a U.S. corporation, we do have responsibilities how that U.S. corporation conducts itself in whatever country it decides to locate.

And I would like to think that it would be more than just about the bottom line. Whatever a company says we are going to defend. That should not be the course of action. We should be proud of the corporations that come out of the United States, and we should be so proud that we want them to adhere to a higher standard, especially with regard to the environment.

But I am worried that, you know, litigation, we say let it play out. I mean, I will be long retired if we decide to just rely on litigation. We need the U.S. Government I think to be more directly involved to help try to referee or help resolve some of these things so that we don't always have to rely on litigation.

I don't know if you have any ideas on how the U.S. Government can actually step up to the plate and help solve some of these problems. I mean, in the earlier panel, I mentioned that Howard Berman, the Chairman of the Foreign Affairs Committee, and I have written to the State Department, asking in our country reports that the issue of environmental contamination, which involves all three of your testimonies, be part of the human rights report.

But that in and of itself is not enough. I mean, admitting that people's rights are being violated because of contamination, that is a good thing. It is kind of one step in this multistep process. But what can the United States do affirmatively to help try to resolve some of the situation that you are talking about?

Mr. DONZIGER. Well, I will comment quickly. I mean, I think it is important to strengthen the rule of law. You know, in our case, Chevron has used its superior resources to delay this case incessantly. I cannot tell you the situations we have dealt

with down there, redundant motions, you know, constant requests for more inspections. They have already had 101 inspections. Constant requests for more reports.

When the judges rule against them and don't play along with the strategy, there is motions to recuse the judges. I mean, this case could go on forever. And actually Chevron's lawyers promised a lifetime of litigation. They literally used the phrase to the indigenous groups who persist in bringing their claims.

Now I know that is the kind of sort of relatively vague issue that is difficult to get one's arms around, the rule of law. But I can tell you that lawsuits under the current system of civil justice both in the United States and in Ecuador are extremely imperfect tools to bring justice to people. You are exactly right about that.

And if we cannot count on our own companies, I mean, you were down there and you saw the people down there associate the United States of America with what Texaco did. It damages the image of our country. It damages the ability of other American companies to make investments in this part of the world.

And if we cannot get our own companies to adhere in those countries to the same standards to which they adhere in this country, and those standards exist for reasons of environmental safety and public health, so in effect, when they don't adhere to them in other countries, they are hurting people. It is almost a per se violation. It is hurting people. And if we cannot get them to step up and really adopt global standards -- I hear the same thing in Nigeria and in other places. And they do it because they calculate in a cold-blooded way that they can get away with it, that it is cheaper to do it that way than to pay any potential litigation costs of being held accountable.

And I can tell you that up to this point in Ecuador, even though we have had tremendous success -- the communities in the Amazon are incredibly resilient, what they have been able to accomplish in trying to hold Chevron accountable -- up to this point, Texaco and now Chevron has gotten away with this. They have gotten away with it.

What will prevent them from getting away with it is a significant judgment at trial that will be enforceable where they will have to pay money. And if we talk about the enforcement of these human rights norms that have been talked about today, these incredibly important norms, we need to talk about enforcement in a language that these companies understand, which is paying the victims compensation for the damage they have caused. If they never have to do that, they will continue to be causing these damages.

For the most part, there are some responsible companies that I think are stepping up in significant ways, but I can say from my own experience, I don't think Chevron is one of them.

Mr. McGOVERN. Mr. Mote?

Mr. MOTE. Yes, there are two cases on Freeport with Moran that West Papua tried to fight back. Ghandi is the oldest, but West Papuans tried to file a lawsuit against the people like Moran. But because of the collaboration between the mining company and Indonesian Government, that law was failed because Indonesian Government did never allow the lawyer to visit to West Papua. And that's a collaboration between the government and the mining, that is one.

And the second was a recent huge report about Freeport is paying Indonesian military, which violates U.S. law. And that is already probably huge report.

Mr. McGOVERN. So they are paying the Indonesian military to do what?

Mr. MOTE. For protection and increase their local government. And they denied that they ever paid, but last month a news report came out that Freeport keep paying.

So there are two huge cases. I think this is something that U.S. Government really needs to support, to investigate, to create own independent team to see that case.

The third one is related to Freeport. It is the assassination of this teacher in 2002 case. FBI conduct an investigation, and then they put a couple of Papuans into jail. But two friend of mine, one is an academic based in Santa Cruz, and the other is a well-known journalist in the -- they come out with the evidence that Indonesian military is employed in that assassination based on that report. Whether FBI was informed of this evidence into the court system or not is not clear. But there are innocent people in jail now because the Indonesian Government did not allow investigations to take place and FBI to investigate this in Papua.

And current president, Yudo Yono, in this particular case, he was informed when first incident happened. He was a prior political commander in Indonesian armed forces. After local police reported that military was involved, the police commander in that time, Made Pastika, he is Governor of Bali now, he published a detailed report about the military personnel's involvement. And that was published in *Washington Post*.

But then current president set up a new team investigate to wipe out this first report. And then the same person, the President of Indonesia, also welcome FBI, inquired FBI to conduct this -- in Court. So there are three case that I think the U.S. Government can help back to Papua, who gave from their land billion and billion of money into this country.

Mr. McGOVERN. All right. Mr. Kretzmann?

Mr. KRETZMANN. I agree with everything Mr. Mote and Mr. Donziger said. I would just say, I mean, it strikes me that there is quite a fundamental issue here. You know, if your neighbor was pouring poison into your backyard on a regular basis and contributing to illnesses and death in your children, et cetera, I doubt that any of us would be satisfied if that neighbor who was also making profit from that, from that exercise, would then just pay a fine. We would expect that person to go to jail and with good right.

So the question is, what is the analog when it comes to corporate behavior internationally? Is there a point at which a corporation should be held to account beyond simply paying compensation to victims? Is there a point at which we should threaten the ability of a corporation to continue to exist? Is there a point at which we, the people, have the right to revoke the social contract that we grant to those corporations? Is there a point at which we can say that they can no longer list themselves on the stock exchange, et cetera, et cetera?

I think these are actually quite relevant questions when we are discussing corporate power in today's globalized world.

Mr. McGOVERN. Well, listen, I want to thank you all for being here. I mean, I want to be clear that the Tom Lantos Human Rights Commission does not take positions on individual cases or individual legal matters. But how these matters on the ground play out with regard to basic human rights, that is something that we concern ourselves with, whether or not people can have access to do investigations, whether or not people who are involved in court cases are threatened.

And look, I think what became clear to me when I visited Ecuador is that this whole issue of environmental contamination is really a basic human rights issue. To see,

and I think it is the same thing that would be in Nigeria as well, I mean, to see young kids swimming in rivers that reek of oil, to watch people take water out of the wells that reek of oil that have that rainbow color to them, that is how much oil is there, to go to areas, you know, well beyond where these well pits are and to just dig a little bit in the soil and see it is jet black and it smells, to go into, you know, wetland areas, well beyond where the oil pits and the drilling were and to see that it is all contaminated, I mean, in the case of Ecuador, you are in the Amazon Basin. I mean, this is probably one of the most precious pieces of geography on the planet.

And to have people say well, we had an agreement with the government at the time, which was a corrupt government; you know, we employ people, so give us credit for that. And yes, we may have left a mess, but we signed an agreement with the government before we left that everything is okay. It doesn't seem to me that that is enough.

And I agree with you, Mr. Kretzmann. I do think that, you know, when you put it down to the very basic level about what would you do if your neighbor did this to you, I don't think people in the United States would tolerate what is going on in some of these countries that you are talking about here today. I mean, if it was us, I think we would be demanding compensation and we would be demanding a remedy.

And my view is that all lives are equal on this planet. So, I mean, if we would be opposed and object to something in our neighborhood, that standard should hold whether it is in Nigeria or West Papua or Ecuador. It should be the same thing.

And one of the things that we are trying to do in this Commission is to bring to the attention of this new Administration the fact that the issue of the environment needs to be brought more front and center. And I think with your testimonies here today, which we value very much, we are going to try to do that.

So any suggestions that you may have about things that we can do to help strengthen the hands of those who want kind of environmental protections and laws to be enforced, we welcome that. So I thank you all for being here. Thanks.

[Applause.]

[Whereupon, at 12:17 p.m., the hearing was adjourned.]